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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------------|------------------|
| 10/029,766 | 12/18/2001 | Adrian Crisan | 1662-55100 JMH (P01-3806) | 4713 |
| 23505 | 7590 | 08/25/2005 | EXAMINER | |
| CONLEY ROSE, P.C. P. O. BOX 3267 HOUSTON, TX 77253-3267 | | | ROMANO, JOHN J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2192 | |

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/029,766

Applicant(s)

CRISAN ET AL.

Examiner

John J. Romano

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 4-9, 11-16, 18-20 and 27-28.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Advisory action.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☒ Other: see Advisory action and PTO form 892.

ADVISORY ACTION

Remarks

1. Applicants' amendment dated 08/01/2005, responding to the June 2nd, 2005 Office action provided in the rejection of claims 1, 4-9 and 11-28, wherein claim 16 has been amended, and claims 17 and 21-26 have been cancelled. Claims 1, 4-9, 11-16, 18-20 and 27-28, remain pending in the application and which have been fully considered by the examiner.

Applicant's arguments filed 08/01/2005, primarily on pages 6-10, have been fully considered but they are not persuasive.

2. In regard to arguments with respect to claim 1, Applicant contends that Jennery fails to show or suggest the concept of *receiving an upgraded image and flashing a ROM with the upgraded image if the upgraded image is available for the ROM during the system initialization*, which examiner respectfully disagrees. Examiner would like to point out that the limitation of *flashing the ROM with the upgraded image if the upgraded image is available for said ROM* was disclosed by Marsh as stated in the previous office action Item 3, Page 4. The Jennery reference discloses "...*during the system initialization, said system receives an upgrade...*", wherein Applicants' concern is the upgrade taking place during the initialization of the computer. Applicant then concludes that "...the only action that takes place during the initialization of the computer is that a trigger is transmitted from the computer to a server in the middle of execution of first and second portions of an operating system on the device" and "...the updates are then

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downloaded after a full initiation occurs...", which examiner strongly disagrees. Jennery clearly states in the description of the drawings of Figures 8A-B (Column 4, lines 22-26) that the figures illustrate a flow chart of one embodiment of a method for *updating the data (emphasis added)* stored within the non-volatile storage device of the network device during loading of an operating system into a memory of the network device (i.e., *during an operating system boot sequence*), (*emphasis added*). Moreover, Jennery discloses to "...modify the data during the operating system boot sequence solely in response to data update instructions if data update instructions are received from the server..." (Column 12, lines 50-53), wherein modifying the data during the operating system boot sequence, again illustrates *Jennerys'* teaching of updating or upgrading during system initialization. Therefore, the rejection is maintained in regard to the current arguments of claim 1.

Accordingly, the rejections of claim 4, 6 and 7 are maintained as depending from claim 1. Likewise, the rejections of claims 9 and 16 are maintained for the same reasons described above with respect to claim 1. Accordingly, the rejections of claims 11, 13, 15, 18 and 20 are maintained as depending from either claim 9 or claim 16. Likewise the rejections of claims 5, 8, 12, 14 and 19 are maintained as depending from either claims1 or claim 9 for the reasons described above.

3. In regard to claim 27, Applicant requests an affidavit attesting to the personal knowledge of the Examiner as to the elements of claim 27 in question or that a proper reference be cited to support the rejection of obviousness. Thus, as disclosed hereinbelow, Galasso et al., US 2001/0007131 A1 (hereinafter **Galasso**) teaches the

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first and second storage area for an untested and approved ROM image (Figure 1 & Page 1, Paragraph [0007]), as claimed. **Galasso** discloses verifying a ROM image contained on a expansion ROM (first storage area) and upon validation the BIOS proceeds to load the ROM image, wherein the ROM image would be loaded to a second storage area for an approved ROM image which has undergone at least one suitable test. Thus, claims 27 and 28 remain rejected.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Romano whose telephone number is (571) 272-3872. The examiner can normally be reached on 8-5:30, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JJR



TUAN DAM
SUPERVISORY PATENT EXAMINER